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JAN 18 2018



**Via Certified Mail –
Return Receipt Requested**

January 12, 2018

Mr. Jeffrey R. Epp - City Manager
Members of the City Council
City of Escondido
201 North Broadway
Escondido, CA 92025

Mr. Christopher W. McKinney
Director of Utilities
City of Escondido
201 North Broadway
Escondido, CA 92025

Onsite Manager / Head of Agency
Hale Avenue Resource Recovery Facility
1521 S. Hale Avenue
Escondido, CA 92029

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act
(Clean Water Act)**

Dear Mr. Epp, Members of the City Council, Mr. McKinney, Onsite Manager and Head of Agency:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of the Hale Avenue Resource Recovery Facility (“Facility”) and its associated sewer collection system.

River Watch hereby places the City of Escondido (“the City”), as owner and operator of the Facility and associated collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Diego Region, Water Quality Control Plan (“Basin Plan”), as the result of violation of Escondido’s National Pollutant Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions.

The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the City is in violation of the CWA by violating the terms of its NPDES permit.

The CWA provides that the authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permit and otherwise regulating the City’s operation of the Facility in the region at issue in this Notice is the Regional Water Quality Control Board, San Diego Region (“RWQCB”).

While delegating Regional Boards to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch contends the order being violated is NPDES Permit No. CA0108944, SWRCB Order No. R9-2015-0026. River Watch has identified specific violations of the City’s NPDES permit including raw sewage discharges and the failure to either comply with or provide evidence that the City has complied with the certain terms of its NPDES permits.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from January 12, 2013 to January 12, 2018, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

I. Sanitary Sewer Overflows Occurrence

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above ground from the collection system prior to reaching the Facility, are alleged to have occurred both on the dates identified

in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by the City, all in violation of the CWA.

The City’s aging sewer collection system has historically experienced high inflow and infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters including Escondido Creek - a water of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as 44, with 329,470 “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the City admits at least 299,897 gallons, or 91% of the total, reached a surface water. These discharges pose both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

Included in the reported SSOs are the following incidents:

- October 15, 2017 (Event ID#840808) – an SSO estimated at 59,331 gallons occurred at Sears Automotive Air Vac as a result of an air relief valve/blow-off valve failure which caused 54,831 gallons of sewage to discharge into Kit Carson Creek. Of the estimated amount, 4,500 gallons of sewage were recovered.
- June 20, 2015 (Event ID # 815978) – an SSO estimated at 50 gallons occurred at 2415 Eucalyptus caused by a pipe structural problem and/or failure. None of the sewage was recovered. All 50 gallons discharged into Lake Hodges via a storm channel.
- March 29, 2013 (Event ID # 793042) – an SSO estimated at 300 gallons occurred at 1487 Industrial Avenue as a result of a water main failure. 250 gallons were reported as recovered and 50 gallons of sewage reached Escondido Creek via a storm drain.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. Further, these alleged discharges are violations of the City’s NPDES Permit, which establishes a broad and comprehensive set of set of “Discharge Prohibitions” in Section III.A. through Section III.Q.

River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

ii. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The City’s SSO Reports, which should reveal critical details about each of these SSOs, lack

responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the City as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the SSO began, the time the City received notification of the SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

- February 27, 2016 (Event ID #822320) – the spill start time and agency notification time are both reported as 07:53 a.m. The operator arrival time and spill end time are not reported. The estimated volume of the spill is reported as 6,790 gallons, all of which is reported as being recovered.
- December 16, 2015 (Event ID #820226) – the spill start time and agency notification time are both reported as 10:30 a.m. The operator arrival time and estimated spill end time are not reported. The estimated total spill volume is estimated at 1,125. Out of the total spill volume, 1,000 gallons are reported as being recovered and 1,125 gallons are reported as reaching land.
- March 13, 2015 (Event ID #813886) – the spill start time is reported as 04:00 p.m. and agency notification time is reported as 04:10 p.m. The operator arrival time and estimated spill end time are not reported. The total spill volume is reported as 300 gallons, 200 gallons of which are reported as being recovered. The remaining 100 gallons are not reported.

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Many of the City's SSO reports list the spill start and agency notification times as exactly the same time. Without correctly reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

b. Failure to Warn

Although the City posts warning signs for some of its SSOs reaching a surface water, River Watch contends the City is understating the significance of the impacts of its CWA violations by failing to post health warning signs for all SSOs which pose an imminent and substantial endangerment to health or the environment regardless of location.

iii. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ, and Waste Discharge Requirements Order No. R-9-2007-0005 ("Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region") governing the operation of sanitary sewer systems. The two Waste Discharge Requirements Orders require that the City take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of

the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and impact of the release. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City is not conducting sampling on most SSOs.

The EPA's "Report to Congress on the Impacts of SSOs" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of the City's SSOs. Neighboring waterways include sensitive areas for the San Diego horned lizard and the California gnatcatcher. River Watch finds no record of the City performing any analysis of the impact of its SSOs on habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system results in discharges to adjacent surface waters either directly or via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

River Watch contends untreated or partially treated sewage is discharged from the City's sewer collection system either directly or via hydrologically connected groundwater to surface waters including Escondido Creek, the Pacific Ocean, Kit Carson Creek, and Lake Hodges. Due to these SSOs, surface waters become contaminated with pollutants including human pathogens. Chronic failures in the sewer collection system pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City's sewer collection system is a violation of its NPDES permits and thus a violation of the CWA.

C. Effluent Limitation Violations

The City's aquatic environment has many beneficial uses as defined in the RWQCB Basin Plan. Discharges in excess of receiving water and groundwater limitations reaching these waters cause prohibited pollution by unreasonably affecting beneficial uses. The coastal waters of the Pacific Ocean, as well as Escondido Creek, the San Elijo Lagoon and estuary, Kit Carson Creek, and Hodges Lake contain many sensitive species and support important recreational values. Receiving water limitations are based on water quality objectives contained in the RWQCB Basin Plan and the California Ocean Plan, and are incorporated by reference into NPDES Permit No. CA0108944.

In order to protect beneficial uses, the City must insure that its discharges do not violate the following receiving water standards for Escondido Creek:

1. Bacterial Characteristics

- a. Total Coliform Organisms: Total coliform organisms concentration shall not exceed the following:
 - I. 1,000 MPN/100 mL geometric mean, based on a minimum of not less than five samples for any 30-day period; and
 - ii. 10,000 MPN/100 mL at any time.
- b. Fecal Coliform: Effluent Fecal Coliform organisms concentration shall not exceed the following:
 - I. 200 MPN/100 mL geometric mean, based on a minimum of not less than five samples for any 30-day period or one sample per discharge event; and
 - ii. 400 MPN/100 mL for more than 10 percent of the total samples during any 30- day period.
- c. Enterococci: Effluent Enterococci concentration shall not exceed the following:
 - I. 33 MPN/100 mL geometric mean, based on all samples during a 30-day period; and
 - ii. 61 MPN/100 mL at any time.

2. Chemical Characteristics

- a. The dissolved oxygen concentration shall not at any time be less than 6 mg/L. The annual mean dissolved oxygen concentration shall not be less than 7 mg/L more than 10% of the time.
- b. Changes in normal ambient pH levels shall not exceed 0.5 units. The pH shall not be depressed below 6.5 or raised above 8.5.
- c. Concentrations of nitrogen and phosphorus, by themselves or in combination with other nutrients, shall be maintained at levels below those which stimulate algae and emergent plant growth.
- d. The discharge of wastes shall not cause concentrations of un-ionized ammonia (NH₃) to exceed 0.025 mg/L as N.

3. Color

Water shall be free of coloration that causes nuisance or adversely affects beneficial uses. The natural color of fish, shellfish, or other resources shall not be impaired.

4. Floating Material

Waters shall not contain floating material, including solids, liquids, foams, and scum in concentrations which cause nuisance or adversely affect beneficial uses.

5. Oil and Grease

Waters shall not contain oils, greases, waxes, or other materials in concentrations which result in a visible film or coating on the surface of the water or on objects in the water, or which cause nuisance or otherwise adversely affect beneficial uses.

6. Radioactivity

Radionuclides shall not be present in concentrations that are harmful/deleterious to human, plant, animal, or aquatic life nor that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal, or aquatic life.

7. Suspended Sediments

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

8. Suspended and Settleable Solids

Waters shall not contain suspended and settleable solids in concentrations of solids that cause nuisance or adversely affect beneficial uses.

9. Taste and Odors

Waters shall not contain taste or odor producing substances at concentrations which cause a nuisance or adversely affect beneficial uses.

10. Temperature

The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the San Diego Water Board that such alteration in temperature does not adversely affect beneficial uses. At no time or place shall the temperature of any waters with designated cold freshwater habitat be increased more than 5°F above the natural receiving water temperature.

11. Toxic Substances

All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life. Compliance will be determined by use of indicator organisms, analysis of species diversity, population density, growth anomalies, bioassays of appropriate duration, or other appropriate methods, as specified by the San Diego Water Board.

12. Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

River Watch finds insufficient information in the public record demonstrating the City has monitored for and complied with these receiving water standards. River Watch is understandably concerned regarding the effects of both surface and underground exceedances of the City's NPDES Permit limitations to beneficial uses applicable to the Pacific Ocean as well as to Escondido Creek, the San Elijo Lagoon and estuary, Kit Carson Creek and Hodges Lake.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the City of Escondido, as owner and operator of the Hale Avenue Resource Recovery Facility and its associated sewer collection

system, as well as those of the City's employees responsible for compliance for the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The City's sewer collection system includes the wastewater collection system and the Escondido Land Outfall pipeline carrying effluent from the Hale Avenue Resource Recovery Facility located at 1521 South Hale Avenue to the San Elijo Ocean Outfall.

The City's sewer collection system consists of approximately 380 miles of pipeline, 7,530 manholes, and 14 pump stations. The system serves an estimated population of 146,000. The collection system delivers wastewater to the Facility. With minor exceptions, the collection system serves only properties within the incorporated boundaries of the City. The Facility is a conventional activated sludge secondary treatment plant. The Facility's biosolids are digested, dewatered with three centrifuges, hauled to a private farm, and land applied as soil amendment. The Facility's effluent is released to the Escondido Land Outfall for delivery, and discharged to the San Elijo Ocean Outfall. An equalization basin is available to equalize peak flows.

The Escondido Land Outfall is a 14.3-mile-long pipeline with varying internal diameters from 30" to 36". The pipeline operates under gravity flow conditions from the Facility, roughly paralleling Escondido Creek, to a point near Lone Jack Road in Olivenhain. From that point to the Escondido Land Outfall's connections with the San Elijo Joint Powers Authority's effluent pipeline and the San Elijo Ocean Outfall line, the pipeline flows under pressure. This junction of the Escondido Land Outfall and San Elijo Ocean Outfall is located just west of Interstate 5 and just north of the San Elijo Lagoon, adjacent to Manchester Road. The San Elijo Ocean Outfall traverses the San Elijo Lagoon, crosses under the railroad and Pacific Coast Highway and extends 8,000 lineal feet into the ocean. The City is located in a long valley in the coastal mountains of Southern California, in San Diego County's North County region, with a total area of 37.0 square miles, 0.2 square miles or 0.48% of which is water. It lies about 18 miles inland, 100 miles south of Los Angeles, and 30 miles northeast of downtown San Diego. The population was 143,911 in the 2010 census.

The City is bisected by Escondido Creek which flows more than 26 miles to meet the Pacific Ocean at San Elijo Lagoon. Originating at the Lake Wohlford Dam in the northeast, Escondido Creek passes through the downtown area of the City and leaves through the Harmony Grove area in the southwest before eventually emptying into San Elijo Lagoon. The creek path through the City was developed into a concrete flood control channel in the 1960s. Escondido Creek watershed covers over 75-square miles beginning at the upper headwaters in Bear Valley above Lake Wohlford. The watershed includes Lake Wohlford, Daley Ranch, Dixon Lake, and Elijo Lagoon. Approximately 25 miles of stream along Escondido Creek and its tributaries are protected by conservation easements or through fee-title ownership by public agencies, water districts, and conservation groups.

All of the water bodies affected by the City's SSOs are listed on the California Water Boards as CWA Section 303(d) impaired bodies of water. San Elijo Lagoon and estuary is impaired for eutrophic, indicator bacteria and sedimentation/siltation. Kit Carson Creek is impaired for pentachlorophenol (PCP) and Total Dissolved Solids. Hodges Lake and Reservoir is impaired for color, manganese, mercury, nitrogen, phosphorus, turbidity and pH.

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its ownership and operation of the Facility and associated sewer collection system as described in this Notice.

5. Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is January 12, 2013 through January 12, 2018. This Notice also includes all violations of the CWA by the City which occur during and after this Notice period up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as “River Watch,” an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with City staff to tailor remedial measures to the specific operation of the Facility and associated sewer collection system. In advance of that conversation, River Watch identifies the following issues for discussion that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

- Determining the specific sewer collection system repairs required, and establishing deadlines for compliance;
- Requiring implementation of an effective SSO reporting and response program;
- Providing a lateral inspection and repair program;
- Ensuring application of chemical root control complies with federal EPA or the RWQCB as well as manufacturer and Cal-OSHA requirements;
- Keeping the Sewer System Management Plan (SSMP) up-to-date and properly certified; and
- Promoting staff training and education.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource may be specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact counsel for River Watch within **twenty (20)** days of receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

Service List

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